



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Jamie Fedor, President
Brdaric Excavating, Inc.
500 Main Street
Swoyersville, PA 18704

Re: Brdaric Excavating, Inc.
Notice of Violation and Request to Show Cause, EPA Docket
No.: CAA-03-2017-0001

Dear Ms. Fedor:

Please be advised that on the basis of a compliance evaluation conducted pursuant to the authority of the Clean Air Act ("CAA" or the "Act") Section 114, 42 U.S.C. § 7414, the United States Environmental Protection Agency ("EPA" or the "Agency") has determined that Brdaric Excavating, Inc. ("Respondent") has failed to comply with certain requirements of a federally enforceable state operating permit ("FESOP") issued by the Pennsylvania Department of Environmental Protection ("PADEP") as FESOP #40-00104 pursuant to regulations incorporated into Pennsylvania's State Implementation Plan ("PA SIP") to the Respondent and governing operations at the facility; and of 40 C.F.R. Part 63, Subpart ZZZZ, the National Emission Standards for Hazardous Air Pollutants ("NESHAPs") for Stationary Reciprocating Internal Combustion Engines ("the RICE Rule") pursuant to Section 112 of the CAA, 42 U.S.C. § 7412. The alleged violations occurred during operation of two crushing units, a Chieftain screen, a triple deck screen, eight conveyers, and a stationary reciprocating internal combustion engine ("RICE") in service at its rock quarry and crushing facility located at 500 Main Street in Swoyersville, Pennsylvania (the "Facility").

The Agency believes that an expedited settlement of this matter is in the best interests of both parties and may avoid the cost and time associated with resolving this matter after the filing of an administrative complaint pursuant to EPA's authorities under the CAA and the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits set forth at 40 C.F.R. Part 22. As a result of the findings contained herein, the Agency is issuing you this Notice of Violation ("NOV") and Request to Show Cause why EPA's information is not correct. Enclosed is a proposed Consent Agreement and Final Order ("CAFO"), which can form the basis for a settlement of the violations discussed herein. A description of the regulatory background, the relevant facts, and the specific violations identified by the Agency are provided below.

I. NOTICE OF VIOLATION

This NOV is issued pursuant to Section 113(a)(1) of the Act, 42 U.S.C. §§ 7413(a)(1), for Respondent's violation of the PA SIP. When a SIP or permit violation occurs, Section 113(a)(1) of the Act requires the Administrator of the US EPA to notify the person in violation and the State having jurisdiction over the source of the violation. PADEP is the applicable state authority in this case.

The Director of EPA Region III's Air Protection Division has the delegated authority to issue NOVs. The geographical jurisdiction of EPA Region III includes Pennsylvania.

II. APPLICABLE STATUTES AND REGULATIONS

A. FESOP

1. Section 113 of the Act, 42 U.S.C. § 7413, authorizes the EPA to take action to ensure that air pollution sources comply with all federally applicable requirements of a FESOP issued by a state as part of a federally approved SIP. Pursuant to 40 C.F.R. § 52.23, failure to comply with any approved regulatory provision of a State implementation plan, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the State implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act.
2. The PA SIP was approved by EPA at 40 C.F.R. § 52.2020(b). General and non-attainment area permit requirements are promulgated at Title 25 of the Pennsylvania Code ("Pa. Code"), Section 127, Subchapter F. These requirements have been incorporated in the federally approved PA SIP.
3. The PA SIP includes 25 Pa. Code Section 127.441(a), which states that "(a) permit may contain terms and conditions the [PADEP] deems necessary to assure [sic] the proper operation of the source."
4. The PA SIP also includes 25 Pa. Code Section 127.444, which provides, in relevant part, that "(a) person may not cause or permit the operation of a source subject to [an operating permit] unless the source and air cleaning devices identified in the application for the plan approval and operating permit and the plan approval issued to the source are operated and maintained in accordance with specifications in the application and conditions in the plan approval and operating permit issued by the [PADEP]."

B. The RICE Rule

5. Section 112 in Title I of the CAA, 42 U.S.C. § 7412, governs the federal control program for hazardous air pollutants ("HAPs") and directs the EPA to define the categories of sources that are required to control emissions of HAPs. HAPs include any air pollutant

listed in Section 112(b) of the CAA, 42 U.S.C. § 7412(b). Section 112(d) of the CAA, 42 U.S.C. § 7412(d), directs EPA to establish NESHAPs for sources in each category to limit the release of HAPs from specific industrial sectors.

6. Pursuant to Section 112(a) of the CAA, 42 U.S.C. § 7412(a), a “major source” is a stationary source that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs. An “area source” pursuant to Section 112(a) of the CAA, 42 U.S.C. § 7412(a), means any stationary source of HAP that is not a major source.
7. In 2008, EPA issued the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (“the RICE Rule”) at 40 C.F.R. Part 63, Subpart ZZZZ, pursuant to Section 112 of the CAA, 42 U.S.C. § 7412.
8. The RICE Rule “establishes national emission limitations for HAPs emitted from stationary reciprocating internal combustion engines (RICE) located at major and area sources of HAP emissions. . . [and] establishes requirements to demonstrate initial and continuous compliance with the emission limitations and operating limitations.” 40 C.F.R. § 63.6580.
9. The RICE Rule applies to owners and operators of “stationary RICE at a major or area source of HAP emissions.” 40 C.F.R. § 63.6585.
10. Pursuant to 40 C.F.R. § 63.6585(a), “(a) stationary RICE is any internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile.”
11. Respondent is subject to the RICE Rule because it owns and operates stationary RICEs at an area source of HAP emissions. 40 C.F.R. § 63.6585.
12. The RICE requirements cover any “affected source,” which includes “any existing, new, reconstructed stationary RICE located at a major or area source of HAP emissions.” 40 C.F.R. § 63.6590.
13. Because Respondent commenced construction of the Facility’s two RICE engines before June 12, 2006, they are considered to be “existing” stationary RICE. 40 C.F.R. § 63.6590(a)(1)(iii).
14. Pennsylvania has not taken delegation for the RICE Rule at this date. Therefore, all reports required by the RICE Rule must be submitted to the EPA.

III. FINDINGS OF FACT

15. Respondent is a private corporation organized under the laws of the Commonwealth of Pennsylvania. Respondent is headquartered at 913 Miller Street, Luzerne, PA 18709.
16. Respondent owns and operates the Facility, a rock quarry and crushing facility located at 500 Main Street, Swoyersville, PA 18704.

17. As a corporation organized under the laws of the Commonwealth of Pennsylvania, Respondent is a "person" within the meaning of Section 113(a) of the Act, 42 U.S.C. § 7413(a), and as defined by Section 302(e) of the Act, 42 U.S.C. § 7602(e). At all times relevant to the violations alleged in this NOV, Respondent has been the owner and operator of the Facility.

18. On April 16, 2015, duly authorized representatives of the EPA conducted a compliance evaluation at the Facility pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414 (the "Inspection").

A. Crushing Units, Chieftain Screen, Triple Deck Screen, and Conveyors

19. On March 21, 2014, PADEP issued Respondent the Permit, designated FESOP #40-0014, with an effective date of May 9, 2014, which governed the operation of manufacturing equipment and air pollution control devices at the Facility for the period from May 9, 2014 through May 9, 2019.

20. At the time of the Inspection, there were two crushing units in operation at the Facility: a primary/jaw crusher powered by a 200 horsepower ("hp") diesel engine; and a cone crusher powered by a 200 hp electric engine. There were also in operation at the Facility at the time of the Inspection a Chieftain screen powered by a 100 hp diesel engine, and a triple deck screen. These pieces of equipment were used to size and screen the various crushed rock into grades or sizes of stone for sale. Additionally, there were 8 conveyors in operation at the Facility at the time of the Inspection which were used to move the sized stone into piles. The cone crusher, the triple deck screen, and the conveyors were powered by an on-site diesel engine/electric generator with horsepower ("hp") greater than 500 ("EGEN"). The crushing operations were installed in or about 1998. The EGEN was manufactured in 1981 and was installed in 2000. At the time of the inspection, no changes had been made to the engines since they were installed at the Facility. The engines identified in this paragraph constitute stationary RICE pursuant to the RICE Rule.

21. The Permit provided at Section C, Part I (Restrictions), paragraph 004, that the permittee [Respondent] may not permit the emission into the outdoor atmosphere of visible air contaminants in such a manner that the opacity of the emission is either of the following:

(1) Equal to or greater than 20% for a period or periods aggregating more than three minutes in any 1 hour.

(2) Equal to or greater than 60% at any time.

22. The Permit required at Section C (Site Level Requirements), Part III (Monitoring Requirements), paragraph 008, that the permittee [Respondent] shall conduct a weekly inspection during daylight hours when the plant is in production to detect visible emissions in excess of the limits stated in Permit Section C, paragraph 004. Visible emissions may be measured according to the method specified in Permit Section C, paragraph 007, or alternatively, plant personnel who observe any visible emissions will report the incident of visible emissions to PADEP within four hours of each incident and

make arrangements for a certified observer to verify the opacity of the visible emissions to have the plume opacity of visible emissions at the Facility measured by qualified personnel.

23. Permit Section C, paragraph 007, provides that visible emissions may be measured using either of the following:
- (1) A device approved by the Department and maintained to provide accurate opacity measurements.
 - (2) Observers, trained and qualified to measure plume opacity with the naked eye or with the aid of any devices approved by the Department.
24. Permit Section C, Part IV (Recordkeeping Requirements), paragraph 010, provides that all instances of exceedance of the visible or fugitive emission limitations, Permit Section C, paragraphs 001 and 004, shall be recorded in a log book.

B. Stationary RICEs

25. The Facility is an area source of HAPs because it is a stationary source which emits or has the potential to emit HAPs including, but not limited to, formaldehyde and carbon monoxide (a surrogate for other HAPs), at levels below major source thresholds.
26. Pursuant to 40 C.F.R. § 63.6550(a), owners and operators of affected RICE must submit each report in Table 7 of the RICE Rule that applies to the affected source.
27. Pursuant to 40 C.F.R. § 63.6650(b)(1), owners and operators of affected sources are required to submit semiannual compliance reports for engines >300 hp beginning after an affected source's compliance date in accordance with Table 7 of the RICE Rule.
28. Pursuant to 40 C.F.R. § 63.6603(a), the existing stationary RICE located at an area source of HAP emissions is subject to the emission standards found in Table 2d of Subpart ZZZZ. According to Table 2d, emissions of CO from engines rated at 500 hp or greater must be limited or reduced by 70% or more or meet an emission standard of 23 parts per million dry volume ("ppmvd") at 15% oxygen ("O₂").
29. EPA has determined that the reduction and emission limit set forth in paragraph 28, above, could not be achieved for the EGEN without installing an after-market control device, or purchasing and operating another engine unit certified by the manufacturer to meet the emission limit in the rule in place of the EGEN.
30. Upon information and belief, Respondent has not installed an after-market control device on the EGEN at the Facility, nor has it purchased and operated an engine unit certified by the manufacturer to meet the emission limit in the rule.
31. As the owner and operator of an affected source which is a non-emergency, non-black start CI stationary RICE rated at greater than 500 brake hp (i.e., the EGEN), Respondent must submit semiannual compliance reports for that engine, as required by 40 C.F.R.

§ 63.6650(b)(1) and Table 7, to include all information in 40 C.F.R. § 63.6650(b) by the dates specified in § 63.6650(b).

32. In accordance with 40 C.F.R. § 63.6650(b), Respondent's compliance date for the RICE Rule was May 3, 2013. As such Respondent was required to submit semiannual compliance reports for the following periods of time:

(a) May 3, 2013 until June 30, 2013;

(b) July 1, 2013 until December 31, 2013;

(c) January 1, 2014 until June 30, 2014;

(d) July 1, 2014 until December 31, 2014;

(e) January 1, 2015 until June 30, 2015;

(f) July 1, 2015 until December 31, 2015;

(g) January 1, 2016 until June 30, 2016;

(h) July 1, 2016 until December 31, 2016.

Respondent has failed to submit any of the required semiannual compliance reports for the time period identified in this paragraph.

33. Pursuant to 40 C.F. R. § 63.6612(a), facilities must conduct an initial performance test or other initial compliance demonstration according to Tables 4 and 5 of Subpart ZZZZ, within 180 days after the compliance date that is specified in 40 C.F.R. § 63.6595 and according to the provisions in 40 C.F.R. § 63.7(a)(2). The initial performance test is conducted to demonstrate compliance with the emission standards found in Table 2d.

34. Pursuant to 40 C.F.R. § 63.6645(h)(2) for each initial compliance demonstration required in Table 5 to Subpart ZZZZ that includes a performance test, affected sources must submit the Notification of Compliance Status ("NOCS"), including the performance test results, before the close of business on the 60th day following the completion of the performance test according to § 63.10(d)(2).

35. Respondent was required to complete performance testing by November 3, 2013, but failed to do so for the EGEN.

36. Respondent was required to submit the Notification of Compliance Status by January 3, 2014, but failed to do so.

IV. VIOLATIONS

A. Crushing Units, Chieftain Screen, Triple Deck Screen, and Conveyors

37. At the time of the Inspection, Respondent had not installed and operated at the Facility a PADEP-approved opacity measurement device; neither did Respondent conduct weekly inspections nor employ emissions observers certified in opacity measurement, nor contract or otherwise arrange with any independent certified observer for the purpose of conducting weekly visible emissions observations at the Facility as required by Permit Section C, paragraphs 007 and 008, in violation of the Permit, section 113 of the CAA, 42 U.S.C. § 7413 and 40 C.F.R. § 52.23.
38. At the time of the Inspection, Respondent did not maintain a log book at the Facility required by Permit Section C, part IV, paragraph 010 containing records of all instances of exceedance of the visible or fugitive emission limitations, Permit Section C, paragraphs 001 and 004, in violation of the Permit, Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. § 52.23.
39. From March 21, 2014 through the date of the Inspection, Respondent failed to comply with Permit Section C, Part III paragraphs 007 and 008, and Section C, Part IV, paragraph 010, as described above, in violation of the Permit, Section 113 of the CAA, 42 U.S.C. § 7413 and 40 C.F.R. § 52.23.

B. Stationary RICEs

40. From July 2013 through present, Respondent failed to submit the semiannual compliance reports required by the RICE Rule for the EGEN, in violation of 40 C.F.R. § 63.6650(b)(1) and Section 113 of the CAA, 42 U.S.C. § 7413.
41. Respondent failed to meet the emission standards found in Table 2d for the EGEN at the Facility, in violation of 40 C.F.R. §63.6603(a).
42. Respondent failed to complete an initial performance test for the EGEN at the Facility by November 3, 2013, in violation of 40 C.F.R. § 63.6612(a).
43. Respondent failed to submit the NOCS by January 3, 2014, in violation of 40 C.F.R. § 63.6645(h)(2).

V. ENFORCEMENT

44. Section 113(a) of the Act, as amended, 42 U.S.C. § 7413(a), provides that whenever, on the basis of information available to the EPA Administrator, the EPA Administrator finds that any person has violated, inter alia, a SIP, FESOP, or provision of a NESHAP, the EPA Administrator, or an EPA official authorized to act as her representative, may, without regard to the period of violation:

(a) ...

- (b) issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties for up to \$27,500 per day of violation for violations occurring on or before March 14, 2004; \$32,500 per day of violation for violations occurring after March 14, 2004; \$37,500 per day of violation for violations occurring after January 12, 2009; and \$93,750 per day of violation for violations occurring after November 2, 2015....
45. Pursuant to Section 306(a) of the Act, as amended, 42 U.S.C. § 7606(a), and regulations promulgated thereunder at 40 C.F.R. Part 15 and Executive Order 11738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violations of the Act may result in ineligibility for participation in any federal contract, grant or loan.

VI. PENALTY ASSESSMENT CRITERIA

46. Section 113(e)(1) of the Act, as amended, 42 U.S.C. § 7413(e)(1), states that the court, in an action for assessment of civil or criminal penalties, shall, as appropriate in determining the amount of penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.
47. Section 113(e)(2) of the Act, as amended, 42 U.S.C. § 7413(e)(2), allows the court to assess a penalty for each day of the violation. For purposes of determining the number of days of violation, where the plaintiff makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this Show Cause (or a previously issued air pollution control agency notice of violation for the same violation), the days of the violation shall be presumed to include the date of this Show Cause (or previous notice of violation) and each and every day thereafter until Respondent establishes that continuous compliance has been achieved, except to the extent that Respondent can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

VII. OPPORTUNITY FOR CONFERENCE

48. Respondents may, upon request, confer with EPA to discuss this NOV. If a Respondent or Respondents request a conference with EPA, Respondent(s) should be prepared to describe the causes of the violation and to describe any actions Respondent(s) may have taken or propose to take to bring their operations into compliance. Respondent(s) have the right to be represented by counsel.

49. Respondent(s) must submit any request for a conference with EPA within fourteen (14) calendar days of receipt of this NOV. A request for a conference with EPA regarding this NOV should be submitted in writing to:

Zelma Maldonado, Chief
Air Enforcement Branch(3AP20)
U.S. Environmental Protection Agency – Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Daniel Boehmcke
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC10)
U.S. Environmental Protection Agency – Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VIII. EFFECTIVE DATE

50. This NOV shall be effective immediately upon receipt.

IX. QUESTIONS REGARDING NOV/SHOW CAUSE

51. If you have any questions regarding the issuance of this NOV, you may contact Erin Willard at (215) 814-2152, or your counsel may contact Mr. Daniel Boehmcke, Senior Assistant Regional Counsel, at (215) 814-2607.

X. DISCLOSURE INFORMATION

52. Certain companies may be required to disclose to the Securities and Exchange Commission (“SEC”) the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under Federal, State or Local environmental laws. Please see the attached “Notice of Securities and Exchange Commission Registrants’ Duty to Disclose Environmental Legal Proceedings” for more information about this requirement and to aid you in determining whether your company may be subject to the same.

53. EPA is enclosing an Information Sheet entitled "U.S. EPA Small Business Resources," (EPA 300 F-07-003, October 2007), which identifies a variety of compliance assistance and other tools available to assist small businesses in complying with Federal and State environmental laws.



Cristina Fernandez, Director
Air Protection Division

4/5/17

Date

Enclosures

cc: Daniel Boehmcke (3RC10)
Senior Assistant Regional Counsel

Jean Grabowski
Chief of Air Quality Operations Section
Northeast Regional Office
PA Department of Environmental Protection
2 Public Square
Wilkes-Barre, PA 18711-0790